



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner
April 8, 2004

Russell F. Dowd
Plant Manager
Pinetree Power, Inc.
Tamworth Power Station
Route 41, P.O. Box 233
West Ossipee, New Hampshire 03890

**CERTIFIED MAIL (7000 0600 0023 9936 4759)
RETURN RECEIPT REQUESTED**

RE: Notice of Proposed Administrative Fine No. AF 04-008


Dear Mr. Dowd:

On behalf of the New Hampshire Department of Environmental Services, Air Resources Division ("DES") I enclose herewith Notice of Proposed Administrative Fine and Hearing No. AF 04-008 ("the Notice") to Pinetree Power, Inc.'s Tamworth Power Station ("Pinetree-Tamworth"), proposing an administrative fine of \$1,000 be imposed against Pinetree-Tamworth for violations of NOx reporting and annual certification requirements.

As you know, on September 15, 1999, DES issued Title V Permit No. TV-OP-018 ("the Permit") to Tractebel Power, Inc., 24 Bridge Street, Concord, NH 03301, for the operation of the Pinetree-Tamworth facility in West Ossipee, NH. However, following a review of the Permit and in our discussions with you, DES personnel determined that Tractebel Power, Inc. no longer maintains an address in New Hampshire, and that the current address of Tractebel Power, Inc. is 1990 Post Oak Boulevard, Suite 1900, Houston, TX 77056-4499. Therefore, explained by DES personnel, this notice is being sent to you as the responsible official of the Pinetree-Tamworth facility as listed in the Permit, and being copied to the current record owner, Tractebel Power, Inc., at the Houston, TX address. In addition to your response to the Notice, please submit to DES a request for an administrative amendment to the Permit in accordance with Env-A 612.01 to correct the owner/address for Tractebel Power, Inc.

Should you have any questions regarding this matter, please contact Ray Walters at (603) 271-6288 in the Air Resources Division, Compliance Bureau.

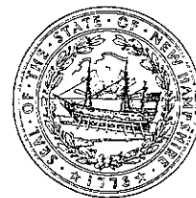
Sincerely,


Mark R. Harbaugh
DES Legal Unit

cc: J. Henslee, Tractebel Power, Inc., Houston, TX
R. Kurowski, EPA, Region I
Public Information Officer, DES PIP Office
H. Mellow, Chairman of Board of Selectman, Town of Ossipee



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Pinetree Power – Tamworth, Inc.
Route 41
P.O. Box 233
West Ossipee, NH 03890

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
NO. AF 04-008**

April 8, 2004

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division (“the Division”) to Pinetree Power -Tamworth, Inc., pursuant to RSA 125-C:15,I-b and Env-C 601.05. The Division is proposing that fines totaling \$1000 be imposed against Pinetree Power -Tamworth, Inc for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Air Resources Division, is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302.
2. Pinetree Power -Tamworth, Inc. (“Pinetree”) is a New Hampshire corporation having a mailing address of Tamworth Power Station, Route 41, P.O. Box 233, West Ossipee, NH 03890.

III. STATEMENTS OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 125-C authorizes the Department of Environmental Services (“DES”) to regulate sources of air pollution in the State of New Hampshire. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, DES has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C, or any rule, permit, compliance schedule, stop use order, or order of abatement, issued pursuant to RSA 125-C.
3. Pinetree operates a wood-fired, 25 megawatt electric power generation plant, located on Route 41 in West Ossipee, NH (“the Facility”).

4. On September 15, 1999 the Division issued Title V Permit No. TV-OP-018 ("the Permit") to Tractebel Power, Inc., 24 Bridge Street, Concord, NH 03301 for the operation of the Facility.
5. Condition XXIII.A of the Permit requires Pinetree to certify, annually from the date of issuance, that the Facility is in compliance with the requirements of the Permit.
6. Condition X.F.8 of the Permit requires Pinetree to submit the annual compliance certification as presented in Condition XXIII.A of the Permit to the Division and the USEPA by April 15 following each reporting year.
7. Pinetree did not submit the annual compliance certification for calendar year 1999 to the Division by April 15, 2000, as required by Condition X.F.8 of the Permit.
8. Condition X.F.1 of the Permit requires Pinetree to submit NOx emission data for all fuel burning devices in accordance with Env-A 901.09(b) (effective 11/16/89) to the Division annually by April 15 of the following year.
9. Pinetree did not submit the NOx emissions data for calendar year 1999 to the Division by April 15, 2000 as required by Condition X.F.1 of the Permit. Pinetree did not submit the calendar year 1999 NOx emissions data to the Division until June 5, 2000.
10. On October 9, 2000, the Division issued Letter of Deficiency No. ARD 2000-013 ("the LOD") to Pinetree for violations of the Permit, including failure to submit the annual compliance certification and annual NOx emission report for calendar year 1999 by April 15, 2000. The LOD requested that Pinetree submit the annual compliance certification to the Division within 30 days receipt of the LOD.
11. Pinetree submitted the annual compliance certification for calendar year 1999 to the Division on November 13, 2000.
12. Pinetree was required by Condition X.F.1 of the Permit to submit the annual NOx emissions data for calendar year 2000 to the Division by April 15, 2001. Pinetree did not submit the NOx emissions report to the Division until May 16, 2001.
13. Pinetree was required by Condition X.F.1 of the Permit to submit the annual NOx emissions data for calendar year 2001 to the Division by April 15, 2002. Pinetree did not submit the NOx emissions report to the Division until June 25, 2002.
14. Pinetree was required by Condition X.F.8 of the Permit to submit the annual compliance certification for calendar year 2001 to the Division by April 15, 2002. Pinetree did not submit the annual compliance report to the Division until April 30, 2002.
15. Pinetree was required by Condition X.F.8 of the Permit to submit the annual compliance certification for calendar year 2002 to the Division by April 15, 2003. The Division called Pinetree on May 14, 2003 to notify it that the calendar year 2002 annual compliance certification

was late. Pinetree submitted the annual compliance report to the Division on May 14, 2003 after being contacted by the Division.

IV. VIOLATIONS ALLEGED

1. Pinetree violated Condition X.F.1 of the Permit by failing to submit the annual NOx emission report for calendar year 2000 to the Division by April 15, 2001.
2. Pinetree violated Condition X.F.1 of the Permit by failing to submit the annual NOx emission report for calendar year 2001 to the Division by April 15, 2002.
3. Pinetree violated Condition X.F.8 of the Permit by failing to submit the annual compliance certification for calendar year 2001 to the Division by April 15, 2002.
4. Pinetree violated Condition X.F.8 of the Permit by failing to submit the annual compliance certification for calendar year 2002 to the Division by April 15, 2003.

V. PROPOSED ADMINISTRATIVE FINES

1. Division is not seeking a fine for the violations identified in Paragraphs IV.1, IV.2 and IV.3.
2. The Division has determined the violation identified in Paragraph IV.4, above, to be a major deviation from the requirements with a minor potential for harm. RSA 125-C:15, I-b specifies a range of \$851 to \$1,500. The Division is seeking a fine of \$1,000 for this violation.

The total fine being sought is \$1,000.

VI. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Pinetree is required to respond to this notice. Please respond no later than May 21, 2004, using the enclosed form as follows:

1. If Pinetree plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to the DES Legal Unit at the address noted on the form.
2. If Pinetree chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Pinetree wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Pinetree's interest in settling.

Pinetree is not required to be represented by an attorney. If Pinetree chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Pinetree wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, Pinetree must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If Pinetree does not notify the DES Legal Unit in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 202.08.

VII. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Pinetree committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Pinetree committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Pinetree proves, by a preponderance of the evidence**, applies in this case:

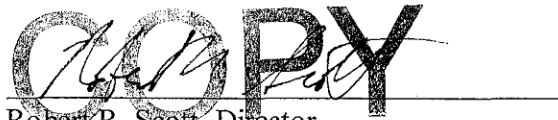
1. The violation was a one-time or non-continuing violation, **and** Pinetree did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Pinetree did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Pinetree was making a good faith effort to comply with the requirement that was violated.
3. Pinetree has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Pinetree's case that was not known to the Division at the time the fine was proposed.

IMPORTANT NOTICE

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Pinetree's opportunity to present testimony and evidence that it did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Pinetree has any evidence, such as photographs, business records or other documents, that it believes show that it did not commit the violation(s) or that otherwise support its position, Pinetree should bring the evidence to the hearing. Pinetree may also bring witnesses (other people) to the hearing to testify on its behalf.

If Pinetree wishes to have an informal meeting to discuss the issues, it must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us/des). If Pinetree has any questions about this matter, please contact the DES Legal Unit at (603) 271-6330.


Robert R. Scott, Director
Air Resources Division

cc: J. Henslee, Tractebel Power, Inc., Houston, TX
M. Harbaugh, DES Legal Unit
Public Information Officer, DES PIP Office
R. Kurowski, EPA, Region I
H. Merrow, Chairman of Board of Selectman, Town of Ossipee
File AFS# 3300300019

***** RETURN THIS PAGE ONLY *****

**PINETREE POWER – TAMWORTH, INC. IS REQUIRED BY LAW TO RESPOND TO
THIS NOTICE.**

PLEASE RESPOND NO LATER THAN May 21, 2004

APPEARANCE On behalf of PINETREE POWER – TAMWORTH, INC.

_____ I will attend the hearing scheduled for Monday, June 21, 2004, at 2:30 p.m. in Room
C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

WAIVER OF HEARING On behalf of PINETREE POWER – TAMWORTH, INC.

_____ I certify that I understand my right to a hearing regarding the imposition of the proposed
administrative fine and that I hereby waive those rights. The fine payment in the amount of
\$1,000 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by check, draft, or money order that is returned due to insufficient funds,
pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of
the original check draft, or money order or \$25.00, whichever is greater, plus all protest and
bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

RETURN THIS PAGE ONLY TO:

**Michael Sclafani, Legal Assistant
Department of Environmental Services ~ Legal Unit
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095**

ENVIRONMENTAL Fact Sheet



6 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.state.nh.us

CO-2

2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.